IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JILL A. COX, individually and as administrator and personal representative of the Estate of Jacob Eli Hively, deceased,

Plaintiff,

v.

C.A. No.: 1:10CV-003
The Honorable Frederick P. Stamp, Jr.
Electronic Filing

THE TRAVELERS COMPANIES, INC. (a/k/a St. Paul Fire and Marine Insurance Company, Travelers Insurance and/or Travelers), a foreign insurance company doing business in West Virginia, ST. PAUL FIRE AND MARINE INSURANCE COMPANY (a/k/a St. Paul Fire & Marine Insurance Company, Travelers, and/or Travelers Insurance), a foreign insurance company doing business in West Virginia, RUMMELS OILFIELD SERVICES (a/k/a Rummel's Oilfield Services, Inc. and/or Keith Rummel d/b/a Rummel's Oilfield Services), a foreign corporation doing business in West Virginia, ELIZABETH E. ADAMS, JOHN DOE(s) #1 and JOHN DOE(s) #2;

Defendants.

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO TRAVELERS/ ST. PAUL'S CROSS MOTION FOR SUMMARY JUDGMENT AND IN FURTHER SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This Court should grant the Plaintiff's Motion for Summary Judgment and rule, as a matter of Wyoming law, that Rummel owned the Silverado at the time of the fatal crash. Travelers and St. Paul (hereinafter collectively referred to as St. Paul") have taken the position that Rummel sold the Silverado to Adams, but admits that the Silverado would be covered under its policy if it was not for the purported sale.[1] St. Paul fails to recognize or chooses to ignore that the purported sale of the Silverado violated Wyoming law and was expressly prohibited by statute. ***In other words, St. Paul asks this Court to rule in its favor by giving force and effect to an illegal transaction that was expressly prohibited by statute.***

For the reasons set forth herein and in Plaintiff's Motion for Summary Judgment and supporting Memorandum, this Court must reject the arguments made by St. Paul and hold that Rummel owned the Silverado at the time of the fatal crash.[2]

ARGUMENT

As set forth in *§ 112.16 of Crouch on Insurance Third Edition (updated December 2009)*[3], resolution of the issue of whether there has been a sale of a motor vehicle sufficient to transfer ownership for liability insurance purposes requires construction of the laws of the particular state in which the purported sale was made. Courts have reached different conclusions based on the language of the governing state's motor vehicle transfer, title and registration laws.[4] Accordingly, the Plaintiff agrees with St. Paul that Wyoming law should be applied in determining the issue of ownership of the Sliverado. The Plaintiff also agrees with St. Paul that the Wyoming Supreme Court has not yet had occasion to interpret its statutes in the context of this issue. Consequently, in resolving the issue, this Court must interpret the applicable Wyoming statutes in accordance with Wyoming rules of construction.

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[1]St. Paul in its Brief and in its original denial letter, acknowledges that the Silverado is a covered vehicle but then inconsistently argues that certain exclusionary language precludes coverage because Adams owned the vehicle.

[2]This memorandum will also serve as a reply to the memorandum filed by Rummel in response to Plaintiff's Motion for Summary Judgment. Rummel takes no position in that memorandum on the insurance coverage issue, but rather, asks the Court "to enter as part of its Order granting or denying Plaintiff's Motion a finding that the Contract for Lien at issue in this case is valid and not illusory." See page 8 of Rummel's Memorandum. For the reasons provided in Plaintiff's Motion for Summary Judgment, which are briefly elaborated on herein, Plaintiff disagrees.

[3]See attached as "Exhibit A."

A. *Pari materia* construction of all applicable Wyoming statutes conclusively establishes Rummel as the owner of the Silverado. To hold otherwise (as St. Paul is requesting) would render meaningless W.S. 31-2-104, 31-4-101, 31-2-101, and 31-2-201.

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[4]The cases cited by St. Paul in its Brief as supporting its defense/contention that Adams should be deemed the owner of Silverado were decided based upon the language of the state transfer, title and registration statutes governing those alleged transactions. However, based on statutes of other states, courts have also ruled that the purported seller retained ownership and that there is coverage under the seller's liability insurance policy. See e.g., State Farm Mut. Auto Ins. Co. v. MFA Mut. Ins. Co., 485 S.W.2d 397 (Mo. 1972)(the word "ownership" as used in the automobile liability insurance policy providing coverage for owned automobiles, must be construed in connection with the provisions of the state statute governing the sale or transfer used automobiles; strict compliance with the statute governing the sale or transfer; even though purported sale was accompanied by full payment and physical delivery of possession, the failure to comply wit the statute rendered any such sale fraudulent and void); Garlick v. McFarland,113 N.E.2d 92 (Ohio 1953) (no purchase had taken place and no change in ownership was made for the purpose of insurance because statute regarding transfer of automobile ownership provided that no person shall sell or otherwise dispose of a motor vehicle without delivering to the purchaser or transferee thereof a certificate of title with such assignment thereto as may be necessary to show title in the purchaser); Calhoun v. Farm Bureau Mut. Ins. Co, 125 N.W.2d 121 (Iowa 1963)(pursuant to statute, ownership of a motor vehicle remains in a registered owner until he assigns the certificate of title for insurance purposes); Maryland Casualty Co. v. American Family Insurance Group, 429 P2d 931 (Kan. 1967)(seller's insurance applicable where buyer had obtained possession and control of an automobile from seller but had not received an assigned certificate of title as required by sale/transfer statute); and Eggerding v. Bicknell ,118 A2d 820 (N.J. 1955)(for the purposes of insurance coverage, legal title to an automobile could not be considered transferred until the parties strictly complied with the rules promulgated by the Director of the Division of Motor Vehicles pursuant to the statutes respecting transfer of title to automobiles).

In interpreting a statute, Wyoming follows the well recognized rule of *pari materia* construction. As set forth in DeHerrera v. Herrera, Wyo., 565 P.2d 479 (1977):

> All statutes on a subject must be construed in pari materia. *State ex rel. Motor Vehicle Division v. Holtz,* Wyo., 674 P.2d 732, 735 (1983). 'It is a fundamental principle of statutory construction that to ascertain the meaning of a given law all statutes relating to the same subject or having the same general purpose shall be read in connection with it as constituting one law.' * * * " *Stringer v. Board of County Commissioners of Big Horn County,* Wyo., 347 P.2d 197, 200 (1959). . . A statute should be construed in such a fashion that one provision will not destroy another. . . (Citations omitted).

Id. at . 482 (see also Campbell v. State, 709 P.2d 425 (Wyo.,1985). Stated another way, in interpreting a statute, a court may not ignore other statutory provisions pertaining to the same subject matter, but must, instead, consider all such provisions in *pari materia*. Horse Creek Cons.Dist. v. State ex rel. Wyoming Attorney General, 2009 WY 143, 221 P.3d 306, 312 (Wyo.2009).

In the instant case, the Plaintiff is relying on W.S. 31-2-104 (entitled "Transfer of Ownership"), 31-4-101 (entitled "General Prohibitions"), 31-2-101 (entitled "Required Application") and 31-2-201 (entitled "Registration required; timeliness").[5] Whereas, St. Paul is relying on W.S. 31-4-103 (entitled "Failure to maintain liability coverage; penalties; exception") and 31-5-102 (entitled "Definitions").

W. S. 31-2-104 provides, in pertinent part, as follows:

> (a) Except as otherwise provided in this section, the owner of a vehicle who sells or transfers his interest in a vehicle for which a certificate of title has been issued shall endorse an assignment and warranty of title upon the certificate for the

[5]For the Court's reference, copies of these Wyoming statutes are attached as "Exhibit B" hereto.

> vehicle with a statement of all liens and encumbrances thereon, which assignment, warranty and statement shall be subscribed by the owner before a notarial officer and acknowledged thereby in the manner provided by law, to be dated and delivered to the transferee at the time of delivering the vehicle. Except as provided in subsection (b) of this section, the transferee shall present the certificate to a county clerk and apply for a new certificate of title within the same time periods as required by W.S. 31-2-201(a)(ii).

Strict compliance with this statute, by its express language, is essential for any sale of a vehicle, including a conditional sale.[6] Compliance is mandatory unless the sale or transfer falls within an enumerated exception as provided in the statute. There is no enumerated exception for a conditional sale. Morever, this statute makes no distinction between an absolute or conditional sale. Simply stated, a sale of motor vehicle is subject to the requirements of this statute.

W. S. 31-4-101 states, in pertinent part:

> (d) No person shall sell or transfer his interest in a vehicle for which a certificate of title is required unless he has obtained a certificate and assigns his interest on the title except as otherwise provided by this act.

(Emphasis added). This statute clearly expresses the Wyoming Legislature's intent to prohibit any sale or transfer not conforming with the statutory requirements governing sales and transfers of motor vehicles (i.e. W. S. 31-2-104). Further, like W. S. 31-2-104, this statute makes no distinction between an absolute or conditional sale.

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[6]As noted above, this statute is entitled "Transfer of Ownership" and it governs the transfer of motor vehicles. Wyoming motor vehicle code contains no other statute so entitled. See, Ward v. Brd. of Comrs., 256 P. 1039 (Wyo. 1927)(in Wyoming, the title of the statute is to be considered when determining legislative intent).

W. S. 31-2-101 (entitled "Required Application")[7] states:

> (a) Except as provided by W. S. 31-2-102 and subsection (b) of this section, every owner of a vehicle which will be operated on Wyoming highways and for which no Wyoming certificate of title has been issued to the owner, or the transferee upon transfer of ownership of a vehicle for which a Wyoming certificate of title is required, shall apply for a certificate of title at the office of a county clerk.

By its express terms, this statute requires any transferee "upon transfer of ownership of a motor vehicle" to apply for a certificate of title at the office of a county clerk. Like W. S. 31-2-104 and 31-4-101, this statute creates no exception for a conditional sale.

W. S. 31-2-201 (entitled "Registration required; timeliness"), sets forth, in relevant part, the following mandatory requirements:

> (a) Every owner of a vehicle shall apply for registration and license plates for the vehicle at the following times:
>
> > (i) Annually not later than the last day of the annual registration month. Applications may be by mail;
> >
> > (ii) Upon transfer of ownership of a vehicle;
> >
> > > (D) Within thirty (30) days . . . Vehicles may be operated by the transferee during this thirty (30) day period when accompanied by a properly executed title for the vehicle transferring interest in the vehicle to the transferee.

Pursuant to this statute, every owner of a motor vehicle is required "upon transfer of ownership" to apply for registration and license plates for the vehicle within thirty (30) days

[7]Please note that this statute was incorrectly identified as W. S. 31-2-201 in Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment.

accompanied by a properly executed title "transferring interest in the vehicle to the transferee." Like the foregoing statutes, this Wyoming statute does not include an exception for a conditional sale.

As set forth in Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment, it is undisputed that neither Rummel or Adams took any action to comply with the mandatory language of these statutes. For additional proof, see *Exhibit C, Deposition of Keith Rummel (pgs. 208-212).*

Implicit in St. Paul's argument is the assertion that the mandatory requirements imposed by these statutes are not applicable in this case due to the purported conditional sale of the Silverado. However, as set forth above, these statutes do not include any exceptions for a conditional sale and may not be ignored. Thus, even if, *arguendo*, the arrangement between Rummel and Adams for the Silverado could otherwise be construed as a conditional sale, Rummel's and Adams' failure to comply with these statutes rendered any such purported sale void, with Rummel remaining the owner.

Pari materia construction of all applicable Wyoming statutes, including the statutes cited by St. Paul it its memorandum, leads to only one conclusion: Rummel must be deemed the owner of the Silverado. To hold otherwise would render meaningless W.S. 31-2-104 ("Transfer of Ownership"), 31-4-101 ("General Prohibitions"), 31-2-101 ("Required Application") and 31-2-201 ("Registration required; timeliness").

B. St. Paul mischaracterizes the applicability, scope and significance of transfer, title and registration statutes.

Contrary to St. Paul's argument, transfer, title and registration laws are not merely administrative or directory. Such statutes are intended to address several public policy concerns (in addition to preventing the theft and trafficking of motor vehicles), including the issue at hand in this case. In Maryland Casualty Co. v. American Family Insurance Group, 429 P2d 931 (Kan. 1967), the Supreme Court of Kansas concisely described the important public policy considerations of its state's title and registration laws by stating:

> The statute was enacted not only to protect the public against fraud and prevent traffic in the sale of stolen automobiles but also to lend stability and certainty in the business climate surrounding each transaction. The rights of those persons affected by a particular sale, such as a mortgagee or an innocent purchaser, are safeguarded by strict enforcement of such statute, and public policy would seem to dictate that the statute should be literally enforced for the protection of a third person who suffers injury at the hand of a buyer (driver) who has obtained possession and control of the automobile from the seller but has not received an assigned certificate of title as required by statute. In such case, the injured party should be entitled to the protection of the seller's insurance if the buyer is operating the automobile as an additional insured under the seller's omnibus clause. If perchance, as here, the buyer also has coverage under a separate policy issued to him on another automobile as the driver of a non-owned automobile, the injured part is protected under the buyer's policy as well.

Id. at 936.

The Plaintiff agrees with St. Paul that the Wyoming Supreme Court has not had occasion to address the purpose underlying its title and registration laws. However, in the absence of any statutory language to the contrary, it would be inappropriate for this Court to conclude that Wyoming's transfer, title and registration laws are not intended to serve the same purposes as described in Maryland Casualty Co. above. St. Paul is obviously advocating that this Court ignore the language of these statutes because they do not support St. Paul's position. That is wrong.

Likewise, it is wrong for St. Paul to argue that certain provisions of the Wyoming Motor Vehicle Safety-Responsibility Act ("MVSRA") are to be applied, rather than Wyoming's transfer, title and registration statutes. Again, St. Paul makes this argument because the transfer, title and registration statutes are adverse to St. Paul's position. As noted above, it is well established that courts look to the transfer, title and registration laws of the governing state when deciding an issue of vehicle ownership for insurance purposes, and not simply the provisions or definitions contained in statutes concerning mandatory insurance. See, Cases cited in "Section A" *supra* of this brief; See, also, United Fire & Casualty Company v. Perez, 419 P. 2d 663 (Colo. 1966) cited by St. Paul in its Brief.

C. St. Paul incorrectly contends that Wyoming's Uniform Commerical Code validates the purported conditional sale, notwithstanding the mandates of Wyoming's transfer, title and registration laws.

In reply to this argument, the Plaintiff notes that in the very first section of Wyoming's UCC addressing sales, there is a specific annotation referencing W. S. 31-2-104.

Notwithstanding the foregoing, St. Paul erroneously focuses its argument on a select portion of the statutory language of W.S. 31.4-2-401 which fails to take into account the provisions of Article 9 of Wyoming's UCC which governs secured transactions. St. Paul has argued that the purported sale only resulted in Rummel retaining a security interest in the Silverado to secure payment (i.e. a security interest). If this was the case, then by virtue of W. S. 31.4-2-401, such transaction would be governed by Article 9 of Wyoming's UCC.

W. S. 34.1-9-201(b) of Article 9 provides that although a transaction may be subject to Article 9, the transaction is also subject to any other law applicable to such transaction. Subsection (c), further provides that in case of any conflict between the provisions contained in Article 9 and the other applicable law, the other applicable law controls. Moreover, W. S. 34.1-9-201(d) provides that Article 9 does not validate any agreement that violates a rule of law, statute, or regulation.

The foregoing is consistent with Shaffer v. Davidson, 445 P.2d 13, (Wyo. 1968). In Shaffer, the Wyoming Supreme Court determined that although a motor vehicle may be the subject of a secured transaction, it is also subject to the laws pertaining to transfer, title and registration. Moreover, the Shaffer recognized that in the event there is a conflict between the provisions of the UCC and the transfer, title, and registration statutes concerning motor vehicles, the transfer, title and registrations statutes control.

Furthermore, in a case cited by St. Paul, Cowels v. Rogers, 762 S.W.2d 414 (Ken. 1989), the Supreme Court of Kentucky expressly held that certificate of title statutes, not the law of sales, govern the issue of who owns a vehicle within the meaning of an insurance policy. The Kentucky Supreme Court also noted that to hold otherwise would seriously undermine the specific mandatory provisions dictating how the transfer of vehicle ownership be accomplished. Id. at 417.

Altogether, the Wyoming Legislature has enacted a comprehensive statutory scheme that governs the sale of motor vehicles, even vehicles conditionally sold. The legislature has expressly prohibited any sale or transfer of a vehicle that does not comply with the provisions of W.S. 31-2-104, 31-4-101, 31-2-101 and 31-2-201. These statutes sets the exclusive manner for effectuating the sale of transfer of ownership of a motor vehicle and supercede the general law relating to sales (UCC).

D. St. Paul disregards established rules of interpretation of insurance policies to creatively rewrite its policy language to employ a technical statutory definition of "owner" that is not the "plain and ordinary" meaning of that term.

As set forth in Plaintiff's Memorandum in Support of Plaintiff's Motion for Summary Judgment, Wyoming follows the well recognized rule of applying the plain and ordinary meaning of words in an insurance policy, without resort to extrinsic definitions, when there is no ambiguity within the language of such policy. Specifically, Wyoming insurance law provides that words used in an insurance policy are to be given their plain meaning as a reasonable person understands them to be. See, e.g., Worthington v. State, 598 P. 2d 796, 806 (Wyo. 1979); Wilson v. Hawkeye Casualty Co., 215 P. 2d 867, 873-74 (Wyo. 1950).

The statutory definition of "owner" that St. Paul advocates is clearly not the plain and ordinary meaning that a reasonable person understands that term to be. The plain and ordinary meaning of the terms "owned" and "owner" of an automobile, as a reasonable person understands those terms to mean, is obviously the registered legal titleholder of the vehicle (not a conditional vendee)..

Moreover, as a matter of fundamental fairness, St. Paul (the party who chose not to define "owned" or "owner" in its insurance policy) should not to be permitted to disregard the plain and ordinary meaning of these terms. If St. Paul's failure to define these terms in its policy creates an ambiguity where these terms may be subject to different meanings, any ambiguity, vagueness or uncertainty must be strictly construed against St. Paul. See e.g., The Doctor's Company v. The Insurance Company of America, 864 P.2d 1018 (Wyo. 1993).

E. St. Paul erroneously ignores the express terms of the purported contract which clearly show that a conditional sale did not take place.

St. Paul has taken the erroneous position that the Silverado was sold to Adams and that both parties were obligated by the terms of the "Contract for Lien" (i.e Rummel required to sell and Adams required to buy). It is well established that a written contract will be construed by looking to the four corners of the document and that extrinsic evidence is inadmissible to construe a contract when the contract is unambiguous. In the present case, the "Contract for Lien" is unambiguous and by its unambiguous terms cannot be construed as a conditional sale.[8] As set forth in Plaintiff's Memorandum in Support of Plaintiff's Motion for Summary Judgment, since Adams was an employee at will whom Rummel could terminate at any time, this purported "contract" was nothing more than a promise for a possible future sale subject to Rummel's own future whim, just as it would have been had Rummel said nothing at all.

As also noted in Plaintiff's Memorandum, the "Contract for Lien" does not contain any promise by Adams to purchase the Silverado. She was not bound/obligated to make such a purchase. Under the express terms, Adams could have quit her employment, thereby entitling Rummel to "repose [sic] his property, without any reimbursement to Adams."

In addition, it is worth noting that Rummel acknowledged his/its continued ownership of the Silverado in both the"Contract for Lien" by stating that Rummel's would hold title to the Silverado "as owner" and referring to the Silverado as "his property." Further, Rummel acknowledged his ownership of the Silverado when he assigned title to Progressive after the crash by declaring under the penalty of law that he was the owner of said vehicle.

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[8] The Plaintiff would argue that extrinsic evidence regarding the Silverado is not relevant given the plain and unambiguous language used in the "Contract for Lien" and that both parties signed the document indicating that they accepted its terms.

Exhibit D, Assignment of Ownership from Rummel to Progressive dated 10/18/2009. .

In summary, the Plaintiff challenges the validity of the purported conditional sale of the Silverado and maintains that under the express terms of the "Contract for Lien" a conditional sale of the Silverado was never made. Consequently, even if this Court disregarded all of the Plaintiff's arguments *supra* and expanded the definition of "owner" to include a conditional vendee, this Court must find that Rummel owned the Silverado at the time of the fatal crash because a valid conditional sale was never made.

CONCLUSION

For the foregoing reasons and those set forth in Plaintiff's Memorandum in Support of Plantiff's Motion for Summary Judgment, the Plaintiff requests that this Court deny St. Paul's Cross Motion for Summary Judgment and grant her Motion for Summary Judgment as to Rummel's ownership of the Silverado.

Additionally, to the extent that St. Paul requests summary judgment on issues not related to the ownership of the Silverado, the Plaintiff requests that such relief be denied. St. Paul's Cross Motion for Summary Judgment appears to seek a broad ruling from this Court that Adams is not entitled to liability insurance coverage under the St. Paul Commercial Automobile Policy issued to Rummels for the claims asserted against her in this case. However, St. Paul's Brief fails to address any other issue, other than that of ownership of the 2005 Silverado ("Silverado"). Discovery is still ongoing in this case, and the Plaintiff has alleged several theories of liability against both Adams and Rummel which the Plaintiff contends are covered by the St. Paul policy, but require factual development. Therefore, the Plaintiff requests that the Court deny St. Paul's broad request for summary judgment as to possible insurance coverage under the St. Paul policy, policy number

VK08303601.

Dated this 28th day of September 2010.

Respectfully submitted,
Plaintiff,
By Counsel

/s/James Brian Shockley

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2010, I electronically filed the PLAINTIFF'S MEMORANDUM IN OPPOSITION TO TRAVELERS/ST PAUL'S CROSS MOTION FOR SUMMARY JUDGMENT AND IN FURTHER SUPPORT OF PLAINTIFF'S

MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF system which will send notification to the following CM/ECF participants:

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